

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for July 23, 2003 PLANNING COMMISSION MEETING

P.A.S.: Special Permit #2028

PROPOSAL: A special permit to allow the sale of alcoholic beverages for consumption on the premises.

CONCLUSION: This request is within 100' of a residence and a residential district both located adjacent to the west of the premises. The grade differences and existing screening between these properties and the layout of the building entrance and customer parking does mitigate the potential impacts of alcohol sales at this location to some extent. However, late night/early morning activities inside and outside the proposed bar could still create a significant disturbance to the peace and enjoyment of the residential property.

RECOMMENDATION:

Denial

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 2, Christensen Addition, Lancaster County, Nebraska.

LOCATION: 2711 South 48th Street

EXISTING ZONING: B-1 Local Business

EXISTING LAND USE: Shopping Center

SURROUNDING LAND USE AND ZONING:

North:	Commercial	B-1
South:	Commercial	B-1
East:	Commercial	B-2
West:	Residential	R-2

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan designates commercial land uses in this area

TOPOGRAPHY: There is a significant change in grade between this site and the residential to the west. There is an approximately 12' high retaining wall with a 6' privacy fence at the top along the west property line and tapering down from the same height at the southwest corner

of the property along Van Dorn. Additionally, the grade is generally falling from south to north across the shopping center.

ANALYSIS:

OVERVIEW: The applicant previously operated Jax Liquor Store from this location, a use that pre-existed the amendments to the Zoning Ordinance requiring special permits for the sale of alcohol. As a result, the off-sale is considered a lawful pre-existing use and can continue to operate.

This request is to allow the sale of alcohol for consumption on the premises, a change in use that requires a special permit for it to be allowed. The applicant is proposing to renovate the building space to accommodate a bar instead of a liquor store. Sections 27.63.680 and 27.63.685 both contain provisions that require separate special permits for either on or off alcohol consumption.

1. SPECIAL PERMIT REQUIREMENTS PER LMC 27.63.685: Alcoholic beverages may be sold for consumption on the premises in the B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2 and I-3 zoning districts upon the approval of a special permit. A special permit for such use may be granted subject to the requirements of the respective districts, all applicable ordinances, and the following conditions, which can be waived by the City Council:

(a) Parking shall be provided on-site at the ratio of one space per 100 square feet of gross floor area.

The parking provided exceeds this requirement.

(b) The sale of alcoholic beverages for consumption off the premises shall not be permitted without issuance of a permit under Section 27.63.685 of this code.

This application is for a special permit to allow for the sale of alcohol for consumption on the premises only. The sale of alcohol for consumption off the premises is a lawful pre-existing use at this location.

(c) The licensed premises of any building approved for such activity must be located no closer than 100 feet from a day care facility, a residential district or residential use, or, if a lesser distance, must mitigate any adverse effects of the reduction in distance through landscaping, screening, or other methods approved by the Planning Director.

An on-site inspection by the Police Department shows that the nearest residential district is approximately 61' away from the premises, with the nearest residence being approximately 66' away. Both are located to the west of the premises. The applicant is requesting that the existing 12' retaining wall, the 6' tall privacy fence located at the top, along with the existing trees all located along the west property line be considered as adequate

mitigation for this use being located less than 100' from a residence or residential district. Because it is less than 100' to a residence and a residential district from the premises, the Police Department is recommending denial of this request.

(d) Any lighting on the property shall be designed and erected in accordance with all applicable lighting regulations and requirements.

No new lighting is proposed. The Building and Safety Dept. has no record that the parking lot lighting has received a permit.

(e) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

A drive-through window is not shown as part of the restaurant.

(f) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.

An amplified outside noise source is not shown as part of this request.

(g) No access door to the business, including loading or unloading doors, shall face any residential district if such doors are within 150 feet of the residential district. This shall not apply to emergency exit doors required by building or safety codes. No door facing a residential district shall be kept open during the operation of the establishment.

The front door does not face a residential district.

(h) Vehicular ingress and egress to and from the property shall be designed to avoid, to the fullest extent possible as determined by the City Council, disruption of any residential district. Particular attention shall be given to avoiding designs that encourage use of residential streets for access to the site instead of major streets.

Access to this site is from both Van Dorn Street and South 48th Street, neither of which are residential streets.

(i) All other regulatory requirements for liquor sales shall apply, including licensing by the state.

(j) The City Council may consider any of the following as cause to revoke the special permit approved under these regulations:

(1) Revocation or cancellation of the liquor license for the specially permitted premises; or

(2) Repeated violations related to the operation of the permittee's business.

Planning Commission review and City Council approval is required for this use.

2. POLICE RESPONSE: The Police Department notes that the premises is less than 100' to a residence and a residential district and recommends denial.

3. PUBLIC WORKS RESPONSE: Public Works and Utilities had no objections to this special permit request.

The staff recommendation is for denial. However, should the City Council vote to approve the request, approval should be subject to the following conditions.

CONDITIONS:

Site Specific:

1. This approval permits the sale of alcohol for consumption on the premises as shown on the site plan.

General:

2. Before receiving building permits:
 - 2.1 The permittee shall have submitted a revised and reproducible final plan with 5 copies.
 - 2.2 Lighting on the property shall be designed and erected in accordance with all applicable lighting regulations and requirements.
 - 2.3 The construction plans shall comply with the approved plans.

Standard Conditions:

3. The following conditions are applicable to all requests:
 - 3.1 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.

- 3.2 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
- 3.3 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

Prepared by:

Brian Will
Planner
July 8, 2003

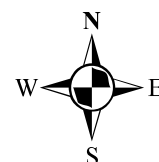
APPLICANT: Mettlen, Inc., d/b/a Jax
2711 South 48th Street #101
Lincoln, NE 68506

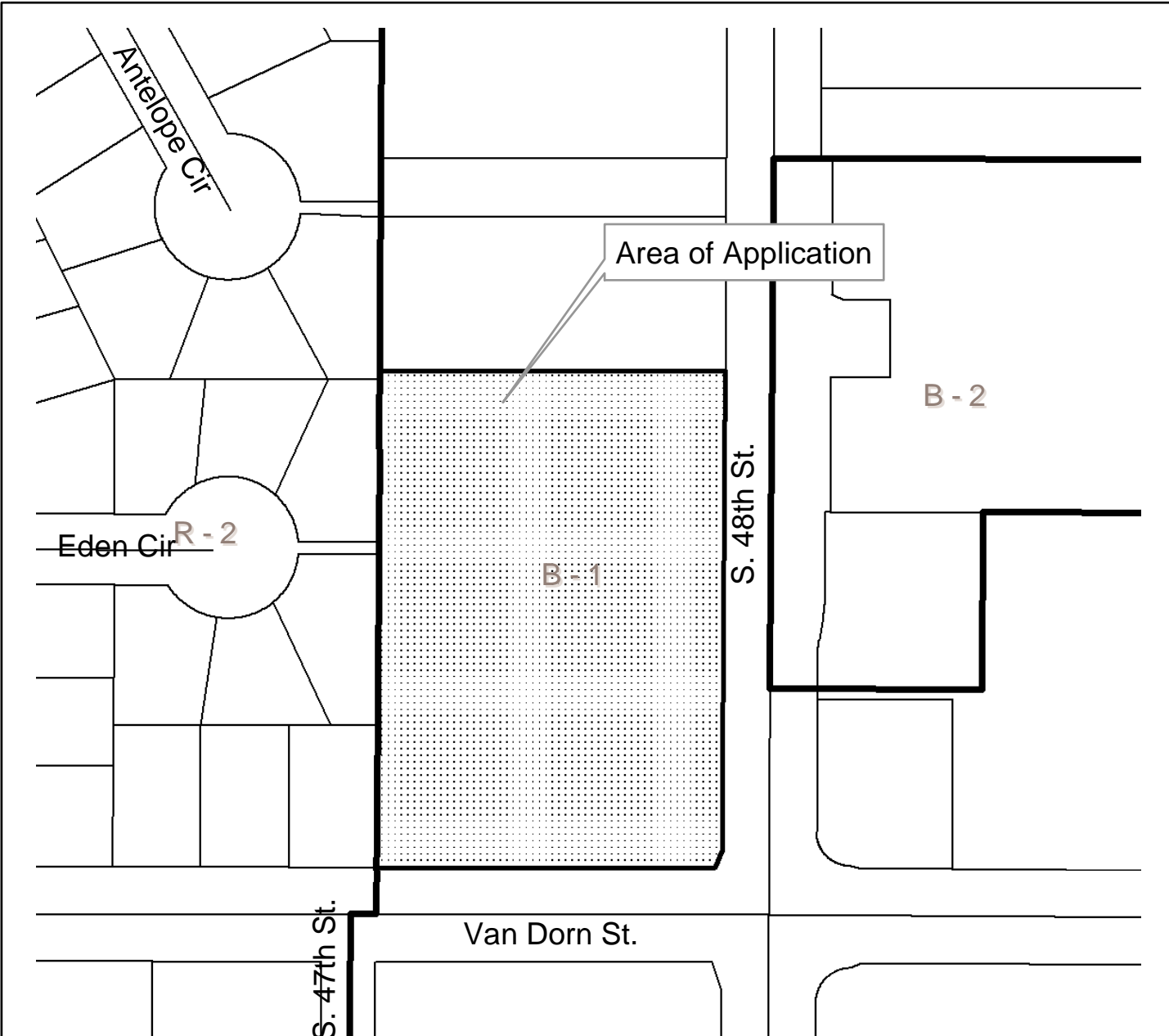
CONTACT: Eugene Podolak
5201 Topaz Court
Lincoln, NE 68516
(402) 540-6644

OWNER: Christensen LTD Partnership



Special Permit #2028 S. 48th & Van Dorn St.



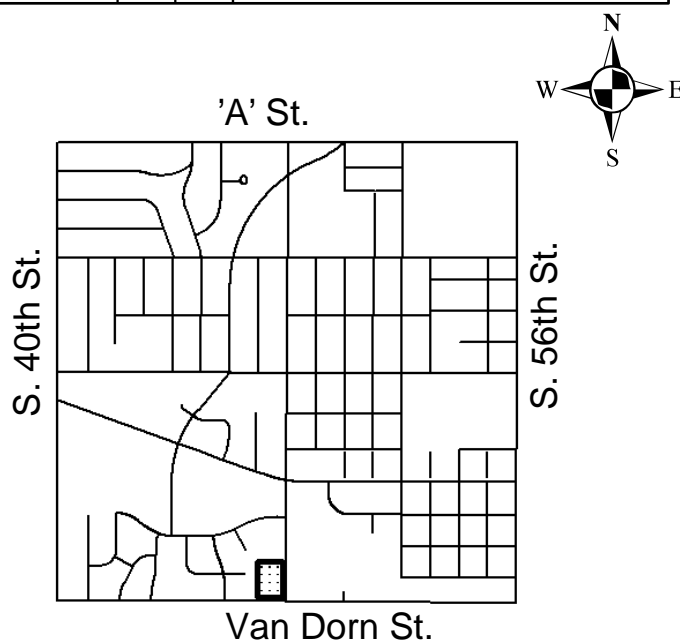
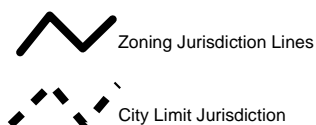


Special Permit #2028 **S. 48th & Van Dorn St.**

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
 Sec. 32T10N R7E



PURPOSE STATEMENT

TO: Planning Staff

We are requesting permission to transform "Jax Beverages" off sale liquor to "Jax" on sale bar. Anticipated hours of operation would be from early afternoon to 1:00 a.m. We expect to employ 6-8 people with Gene Podolak being the active, on-site manager. Since an off-sale generates constant turnover traffic, and an on-sale does not, we project less activity in the parking lot and its entrances. Maximum occupancy will probably be 70-75 patrons.

Additional information regarding Special Use Permit RE 27.63.680 Section C.

While we do not meet the first part of this zoning ordinance rule of 100' from the building (Jax) to the west residential property line, we do comply with the second half of Section "C" with an uncompromisable barrier. In addition to over 61 linear feet to the property line, there is a 13' concrete retaining wall, creating a grade separation, and a chain link fence on top of the concrete wall that faces the west and the south sides of the building. Also on the west is a 6' privacy fence providing further screening. The premises in question have always been used for commercial purposes.

Additionally, due to the layout and the location of the entrance on the east side of this site, the business activity will be conducted 140' - 145' away from the property line in question. There are no doors or windows on the south side and only one door for deliveries and emergency exiting on the west side. The premises are too small to have live music.

We ask that you consider this combination of circumstances more than mitigates any possible impact to adjacent properties.

Gene Podolak

25'-30" RETAINING WALL
PRIVATE FENCE

P.04
STAINING WALL
402-753 9947

MARK S. CHAMPION, AIA
ARCHITECT
530 SOUTH STREET, LINCOLN NE 68502 (402) 475-2400

Van Dorn

LANCASTER SQUARE

AS PER CITY OF LINCOLN, NEBRASKA
BY BUILDING AND PERMITTING DEPARTMENT
CITY OF LINCOLN, NEBRASKA
THIS APPROVED DRAWING
SHALL NOT BE CHANGED,
MODIFIED, OR ALTERED
WITHOUT PERMISSION
FROM THE BUILDING AND
SAFETY DEPARTMENT
THIS APPROVED DRAWING
SHALL BE KEPT ON THE
CONSTRUCTION PREMISES
AT ALL TIMES DURING
WHICH THE WORK AUTHO-
RIZED IS IN PROGRESS
AND SHALL BE OPEN TO
INSPECTION BY PUBLIC
OFFICIALS.

DATE _____
REVIEWER _____
PERMIT _____

20' FRONTYARD
RETBACK LINE

PROPERTY LINE



Coffee Kiosk
Area will be available for parking
48th STREET

SCALE: 1" = 50'-0"

ESPRESSO 101

48th & Van Dorn Streets, Lincoln, Nebraska



Date 19 OCT 01
Project 01008 rmm
Dwg. rmm/bd aqn



Memorandum



To: Mr. Brian Will
From: Sergeant Michael S. Woolman
Date: July 1, 2003
Re: Mettlen Inc. DBA Jax

Mr. Will,

I have reviewed the Mettlen Inc DBA Jax Alcohol Sales Special Permit #2028. Section 27.63.680 of the Lincoln Municipal Code states that the licensed premises of any building approved for such activity must be no closer than 100 feet from a day care facility, a residential district or residential use, or, if a lesser distance, must mitigate any adverse effects of the reduction in distance through landscaping, screening, or other methods approved through the Planning Director.

Mettlen Inc DBA Jax is located at 2711 South 48th Street #101. Sgt. Richards and I took measurements from the west wall of the 2711 South 48th Street #101 to the retaining wall located on the west end of the property line. The distance from wall to wall is 61 feet. The retaining wall, with a residential privacy fence attached, separates the west parking lot of 2711 South 48th Street and the east property line of a residential house located at 4630 Van Dorn Street.

The Lincoln Police Department is recommending denial based on the criteria that the proposed location is within 100 feet of a residential district / residential use.

Sergeant Michael S. Woolman